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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA**

David Melian, et al.,

Plaintiffs,

v.

Glock Incorporated, et al.,

Defendants.

No. CV-19-04872-PHX-GMS

**PLAINTIFFS' RULE 41(a)(1)(A) NOTICE
OF VOLUNTARY DISMISSAL
WITHOUT PREJUDICE**

(Assigned to the Honorable G. Murray Snow)

Pursuant to Fed. R. Civ. P. 41(a)(1)(A), Plaintiffs hereby give notice that they voluntarily dismiss their Complaint filed August 1, 2019 [Doc. 1] without prejudice in the above-captioned matter. This action is subject to voluntary dismissal without prejudice under Rule 41(a)(1)(A)

1 because the opposing parties have not served an answer or filed a motion for summary
2 judgment.

3 In addition, Plaintiffs' voluntary dismissal is not subject to court approval and/or notice
4 to the potential class members under Fed. R. Civ. P. 23(e) because there is no class certification
5 or a proposed settlement involved. See *Crook v. WMC Mortg. Corp.*, No. 06-cv-535-JPG, 2006
6 U.S. Dist. LEXIS 72616 (S.D. Ill. Oct. 5, 2006) ("[T]he 2003 amendments make clear that Rule
7 23 . . . only applies to the 'claims, issues, or defenses of a certified class.' Thus, settlements or
8 voluntary dismissals that occur before class certification are outside the scope of [Rule 23]." 7B
9 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice & Procedure § 1797
10 (3d ed. 1998 & Supp. 2006) (footnote omitted). Because no class has been certified in this case,
11 voluntary dismissal in this instance is governed not by Rule 23 but by Rule 41 of the Federal
12 Rules of Civil Procedure."); See also *Cramblit v. City of Columbus*, No. 2:05-CV-301, 2006
13 U.S. Dist. LEXIS 41432, fn. 1 (S.D. Ohio June 21, 2006) ("F.R. Civ. P. 23(e) was substantially
14 modified effective December 2003. Under its current formulation, Court supervision of
15 settlement and compromise of claims is required only with respect to "a certified class."); see
16 also *Eckert v. Equitable Life Assurance Soc'y of the United States*, 227 F.R.D. 60 (E.D.N.Y.
17 2005), (citing to Advisory Committee Notes to 2003 Amendment to Rule 23 which states: "Rule
18 23(e)(1)(A) resolves the ambiguity in former Rule 23(e)'s reference to dismissal or compromise
19 of "a class action." That language could be--and at times was--read to require court approval of
20 settlements with putative class representatives that resolved only individual claims. The new
21 rule requires approval only if the claims, issues, or defenses of a certified class are resolved by a
22 settlement, voluntary dismissal, or compromise."); see also *Villegas v. J.P. Morgan Chase &*
23 *Co.*, No. CV 09-00261 SBA(EMC), 2012 U.S. Dist. LEXIS 166704 (N.D. Cal. Nov. 20, 2012)
24
25
26

1 (“Rule 23 requires judicial review of any settlement of the "claims, issues, or defenses of a
2 certified class.”).

3 Here, there is no class certification. The Plaintiffs have not filed a motion to certify the
4 class and the class has not been certified. In addition, there is no settlement involved. The parties
5 have not held any settlement discussions or otherwise agreed to a settlement of any kind. As a
6 result, the requirements of Rule 23(e) do not apply.
7

8 Based upon the foregoing, Plaintiffs hereby voluntarily dismiss their Complaint [Doc. 1]
9 under Rule 41(a)(1)(A) without prejudice, and respectfully request that the Court enter an order
10 of voluntary dismissal.

11 DATED this 7th day of October, 2020.
12

13 **LEWIS LAW FIRM, PLC**

14 By: /s Robert K. Lewis
15 Robert K. Lewis
16 Christopher Treadway

17 In association with:

18 **POKORA LAW, PLC**

19 Amy M. Pokora
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26

CERTIFICATE OF SERVICE

I hereby certify that on October 7, 2020, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the CM/ECF registrants on record.

/s Christopher A. Treadway